

**Rule 8, Ariz. R. Crim. P.**

**SPEEDY TRIAL — Continuances to allow substitution of defense counsel  
— Revised 11/2009**

When a defendant seeks a continuance of trial to retain new counsel, the trial court must consider several factors in deciding whether to grant the motion. *State v. Hein*, 138 Ariz. 360, 369, 674 P.2d 1358, 1367 (1983). The decision of the trial court will not be reversed absent a clear abuse of discretion and a showing of prejudice. *State v. Williams*, 144 Ariz. 433, 441, 698 P.2d 678, 686 (1985); *State v. Sullivan*, 130 Ariz. 213, 215, 635 P.2d 501, 503 (1981). In *State v. West*, 168 Ariz. 292, 812 P.2d 1110 (App. 1991), the defendant moved for a continuance shortly before trial, claiming that he wanted to hire private counsel rather than retain the public defender. Private counsel filed a notice of appearance appeared and asked for a continuance to allow her to prepare for trial. The trial judge denied the motion to continue, permitted private counsel to withdraw, and ordered the public defender to represent the defendant at trial. The defendant was convicted and on appeal, he argued that the trial court's failure to grant the continuance deprived him of his right to counsel. The Court of Appeals disagreed. Citing *Hein*, 138 Ariz. at 369, 674 P.2d at 1367, the Court noted that "While a defendant has the right to be represented by counsel, the right to choice of counsel is not absolute nor is there a right to repeated continuances to hire new counsel." *Id.* at 296, 812 P.2d at 1110. The Court then stated that when a defendant moves to continue to seek new counsel, "Several factors must be considered on such a motion to continue: whether other continuances were granted, whether other competent counsel was prepared, the

convenience to the litigants and witnesses, the length of requested delay, the complexity of the case and reason for delay." *Id.* at 296-97, 812 P.2d at 1114-15. The Court noted that because the defendant had been in jail for eight months and the trial court had granted several continuances during that time, no error resulted in denial of the motion to continue. *Accord, State v. Miller*, 111 Ariz. 321, 529 P.2d 220 (1974).